

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

SIERRA CLUB,

Intervenor-Plaintiff,

v.

DTE ENERGY COMPANY AND  
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.  
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven  
Whalen

**JOINT MOTION FOR STAY PENDING SETTLEMENT NEGOTIATIONS**

Pursuant to Local Rule 7.1(a), Plaintiff United States of America (“United States”) and Defendants DTE Energy Company and Detroit Edison Company (collectively, “DTE”) jointly move for a 120-day stay of this case while they continue to engage in settlement negotiations seeking to resolve this case in its entirety. Counsel for the United States and DTE have conferred with counsel for Plaintiff-Intervenor Sierra Club, which has not been included in such settlement negotiations to date. Sierra Club advises that it does not oppose the present stay request subject to the agreement of DTE and the United States that if DTE and the United States seek to extend or renew any stay beyond the currently-requested

120-day period in order to continue settlement discussions, Sierra Club will be included as a full participant in those settlement discussions.

In further support of this motion, the United States and DTE state the following:

1. This litigation began in 2010 when the United States filed its complaint and motion for preliminary injunction. On November 23, 2010, Sierra Club's motion to intervene as a plaintiff in this proceeding was granted. The litigation has been to the United States Court of Appeals for the Sixth Circuit twice. The Court granted summary judgment for a second time to DTE on the claim in the original complaint on March 3, 2014 [ECF No. 196], and Plaintiffs again appealed to the Sixth Circuit [ECF Nos. 221, 222]. By judgment dated January 10, 2017, the Sixth Circuit reversed and remanded in a 2-1 decision with three separate opinions. [Case nos. 14-2274, 14-2275, Doc. 40-2]. DTE timely filed a petition for certiorari to the United States Supreme Court, which was denied by order dated December 11, 2017 [*see* ECF No. 235]. The Sixth Circuit's mandate was issued on December 14, 2017, and was received by the clerk of this Court on the same day [ECF No. 236]. This Court has set a status conference for February 7, 2018 [ECF No. 237].

2. In 2013 and 2014, respectively, Plaintiffs filed Amended Complaints alleging new claims based on projects at other units [ECF Nos. 184-2 and 214].

*See* ECF No. 220 at 3 (Court finding that “the Unit 2 NSR claim is separate and distinct from the adjudicated claims”). On unopposed motion and after the Court certified its partial judgment for appeal pursuant to Fed. R. Civ. P. 54(b), the Amended Complaints were stayed pending appeal [ECF No. 220].

3. Upon lifting of the stay, the litigation in this Court recommences on both the original claim as to Monroe Unit 2 and the new claims as to additional Monroe units, Belle River and Trenton Channel.

4. The United States and DTE are in active settlement negotiations to resolve all claims between them. To date, Sierra Club has not been included in such negotiations. DTE and the United States have agreed to include Sierra Club as a full participant in settlement negotiations in the event that they seek to extend or renew any stay in this proceeding beyond the currently requested 120-day period in order to continue settlement negotiations.

5. Many circumstances, both factual and legal, have changed since 2010 when this litigation commenced. Moreover, while DTE denies liability with respect to all claims in this case, the continuing expense and uncertainty of this expansive litigation favors exploring whether a resolution by agreement can be reached before the parties re-engage full-blown discovery and trial preparation on multiple, complex claims.

6. Both judicial efficiency and conservation of the parties' resources favor a temporary stay while these settlement negotiations are pursued.

7. The United States and DTE request that the Court cancel the February 7, 2018, status conference and stay this litigation for 120 days to allow the parties to continue their pursuit of settlement. On or before expiration of the stay, they will file a report with the Court on the status of negotiations.<sup>1</sup>

Respectfully submitted, this the 1st day of February 2018.

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<sup>1</sup> On January 24, 2018, the Court issued a notice to appear for a status conference on February 7, 2018. [Dkt. 237.] Lead counsel for DTE has an unavoidable commitment that day. If the Court denies the motion to stay, DTE moves in the alternative to reschedule the status conference.

Jeffrey H. Wood  
Acting Assistant Attorney General  
Environment & Natural Resources  
Division

/s/ Thomas A. Benson  
Thomas Benson  
thomas.benson@usdoj.gov  
Kristin M. Furrie  
kristin.furrie@usdoj.gov  
U.S. Department of Justice  
Environmental and Natural Resource  
Div.  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044  
202-514-5261

U.S. Attorney's Office  
211 W. Fort Street  
Suite 2001  
Detroit, MI 48226

/s/ Harry M. Johnson, III  
F. William Brownell  
brownell@hunton.com  
Harry M. Johnson, III  
pjohnson@hunton.com  
Makram B. Jaber  
mjaber@hunton.com  
Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006-1109  
(202) 955-1500

Brent A. Rosser  
Hunton & Williams LLP  
101 South Tryon Street  
Suite 3500  
Charlotte, North Carolina 28211  
brosser@hunton.com  
(704) 378-4707

Matthew J. Lund (P48632)  
Pepper Hamilton LLP  
100 Renaissance Center, 36th Floor  
Detroit, Michigan 48243  
lundm@pepperlaw.com  
(313) 393-7370

Michael J. Solo (P57092)  
Andrea E. Hayden  
DTE Energy  
One Energy Plaza  
Detroit, Michigan  
solom@dteenergy.com  
haydena@dteenergy.com  
(313) 235-9512

*Counsel for Defendants*